

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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(240) 777-6600**

CASE NO. A-6626

PETITION OF MICHELE CARROLL

**OPINION OF THE BOARD
(Opinion Adopted July 17, 2019)
(Effective Date of Opinion: July 25, 2019)**

Case No. A-6626 is an application for a variance needed to enclose an existing equestrian riding ring. The proposed construction requires a variance of forty (40) feet as it is within ten (10) feet of the side street lot line. The required setback is fifty (50) feet, in accordance with Section 59-4.3.4.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on July 17, 2019. Jody S. Kline, Esquire, appeared in support of the variance application on behalf of Petitioner Michele Carroll, who was also in attendance and testified in support of the requested variances.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block A, Ashton River Estates Subdivision, located at 1000 Rivermist Court, Brinklow, Maryland 20862, in the RC Zone.
2. The subject property is an irregularly-shaped, multi-sided lot, with an area of 5.2393 acres. The Applicant's Statement ("Statement") notes that while the subject property is larger than the other seven lots in the Ashton River Estates Subdivision, this is due to the fact that the subject property "contains substantial areas of land that are unbuildable due to a) building setback restrictions, b) floodplain and stream valley buffer setbacks and c) topography." See Exhibit 3. The Site Plan shows that the subject property is located on the south side of the intersection of Rivermist Court and New Hampshire Avenue. See Exhibit 4(a). The Statement indicates that Rivermist Court is

designated as the property's front yard for setbacks purposes, and that the required setback from New Hampshire Avenue is a "side street setback." See Exhibit 3.

3. The Statement states that the Petitioner and her daughters and granddaughter are all "competitive equestrians" who participate in jumping competitions. It asserts that the Petitioner needs the proposed indoor riding ring for training purposes, and indicates that the subject property currently contains a 100' x 200' open air riding ring, which the Petitioner constructed, that contains three (3) inches of "sand containing natural fiber materials" and four (4) inches of bluestone base. The Statement explains that "[t]hese materials provide a consistent footing necessary for the sophisticated jumping exercises expected of the family's horses," and notes that "[i]t would be extremely wasteful to abandon the existing open air riding ring to replace it with a new enclosed riding ring which, along with the construction of an enclosed equestrian building, would be an extremely expensive undertaking." See Exhibit 3. A drawing submitted with Petitioner's application shows that the proposed indoor facility will be 80' x 180' x 16', which is smaller than the existing open air riding ring, and the Statement indicates that it will be constructed "over part of the existing outdoor riding ring...." See Exhibits 3 and 5(b).

4. The Statement indicates that there are numerous constraints on the development potential of the subject property, including required zoning setbacks, locational requirements for accessory buildings (behind the rear building line), flood plain limits per FEMA, flood plain limits per MNCPPC, and slopes/topography. See Exhibit 3. The Petitioner has included an exhibit with her submission that shows the cumulative effect of these constraints on the area available for the proposed construction. See Exhibit 4(b). The Statement at Exhibit 3 further states that:

Environmentally sensitive features significantly dictate the limited location where new construction can occur on the subject property. As shown on the attached "Development Constraints" exhibit, flood plain and stream valley buffer covers 35 – 40% of the property and "sterilizes" the entire southern and southwestern side of the property. Furthermore, areas adjacent to the flood plain/SVB, while not necessarily "steep slopes", would be impracticable to regrade to create the flat surface necessary for an indoor riding ring.

As shown on the attached exhibit, there is only a small area, not large enough to accommodate the footprint of the proposed indoor riding ring, that allows for new construction on the property.

5. The Statement also asserts that the proposed location of this "equestrian related structure, deemed to be an agricultural building" is "consistent with the historical pattern of locating agricultural buildings in close proximity to property and roadways," and indicates that the Petitioner will present evidence of this at the hearing. It states that the Petitioner is not responsible for the environmentally sensitive features and topography of her property, and that the proposed structure "has been 'pushed' as far to the west as it can go before encountering slopes with steep inclines leading to the flood plain and stream valley buffer." See Exhibit 3.

6. With respect to Master Plan compliance, the Statement states that “[t]here are no Master Plan considerations that influence the location of buildings on the subject property,” and that the “paved area of New Hampshire Avenue is set back a substantial distance from the property’s boundary line and the Master Plan reflects no plans to realign New Hampshire Avenue, a fact verified by the State Highway Administration.” With respect to the effect of the proposed construction on neighboring properties, the Statement notes that the proposed facility “will not abut any single family residences,” and that “[t]he property across New Hampshire Avenue confronting the area of the proposed indoor riding ring is unimproved and is farmed.” See Exhibit 3. The record contains letters of support from the owners of the other properties on Rivermist Court. See Exhibits 9(a)-(d).

7. In lieu of a building permit denial, the Petitioner has submitted a letter from the Department of Permitting Services (“DPS”), dated June 3, 2019, which explains that because the use of the proposed equestrian facility is considered to be “exclusively for agricultural purposes,” no building permit is required for the proposed building. The letter goes on to state that because the proposed enclosed riding ring “will be located 10 feet at its closest point from the side property line abutting New Hampshire Avenue,” a variance of 40 feet is required from the 50 foot side street setback for accessory structures in the RC Zoning. See Exhibit 6.

8. At the hearing, Michele Carroll testified that she has owned the subject property for 30 years, and that she uses it for show horses. She testified that the property has been placed in a trust so that it can continue to be used for these purposes. Ms. Carroll testified that her daughters and granddaughter compete in equestrian events at the highest level, including the Washington International Horse Show, that are held in Maryland and other nearby states. Ms. Carroll testified that participating at this level requires that her horses be worked out at least five days a week. She testified that in order to ensure the safety of the horses and riders, the ring on which they train must be meticulously maintained, stating that she personally has to water and drag the ring every day to keep the surface even for the horses. Ms. Carroll testified that because of the horses’ rigorous training schedule and the inability to train outdoors in inclement weather, she has to keep her horses at another equestrian facility that has an indoor riding ring during certain times of the year. She testified that if she is unable to construct the proposed indoor riding ring, she would likely have to move out of the area in order to afford a suitable property.

Ms. Carroll testified that if the proposed indoor riding ring is allowed, it will be similar to the structure shown on Exhibits 5(c), (d) and (e), which is located about six miles from her home and was built by the same builders, but it would have more windows to allow for better air flow.

9. Mr. Kline explained that there are natural/environmental and Zoning Ordinance restrictions on the subject property which limit the ability of the Petitioner to locate the proposed indoor riding ring elsewhere on her property. He stated that about 35 to 40 percent of the property is in a floodplain and cannot be used. He stated that there are

also steep slopes on the property which either would not allow construction of the proposed structure or would require such extensive regrading in order to achieve the flat surface needed for this equestrian use as to render the project infeasible. Mr. Kline explained that the Zoning Ordinance imposes several restrictions on the location of the proposed accessory building, including a side street setback line which cuts into the existing outdoor riding ring. He stated that the cumulative effect of these environmental/natural restrictions and Zoning Ordinance restrictions leaves only a small area available for construction, and that this allowable area is not large enough for the proposed structure. Mr. Kline presented a slideshow which graphically illustrated the effects of these restrictions. See Exhibit 11.

In response to Board questions asking if the proposed construction could be moved farther away from New Hampshire Avenue, Mr. Kline estimated that because of the slope, that would require the construction of a 12- to 15-foot retaining wall. Ms. Carroll then testified that the property drops 28 feet between the western edge of the existing outdoor riding ring and the edge of the floodplain, and that she knew this because she had considered such action and had had an estimate done to see if it was feasible.

In furtherance of the assertion made in the Statement that permitting the proposed construction in close proximity to the property line along New Hampshire Avenue would be consistent with the historical pattern of locating buildings in close proximity to roadways, Mr. Kline stated that he had driven out Georgia Avenue and down New Hampshire Avenue to observe the development pattern. He presented the Board with photographs of several properties near the subject property which contain structures that are located very close to the roadway, and concluded that there is a pattern of buildings being close to the right-of-way in this area, particularly agricultural buildings. See Exhibit 11. Mr. Kline stated that the proposed building would therefore not be inconsistent with the character of the neighborhood.

Finally, Mr. Kline showed the Board photographs of the existing vegetation along the west side of New Hampshire Avenue, bordering the subject property, and stated that this vegetative buffer will make it difficult to see the proposed structure from New Hampshire Avenue. See Exhibit 11. He stated that New Hampshire Avenue has a 120 foot right-of-way but that the paved portion is only 20- to 30-feet wide at this point. He stated that there is a lot of growth along this roadway, and that the existing outdoor riding ring is at a lower elevation than the road. Mr. Kline stated that the proposed indoor riding ring has been pulled as far as possible to the southwest, leaving a ten (10) foot setback from the property's side street lot line.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

Section 59-7.3.2.E.2.a.iii. the proposed development contains environmentally sensitive features or buffers;

The Board finds that the subject property has a unique shape, and further finds that while the property is larger than other properties in the subdivision, it is encumbered by a flood plain, stream valley buffer, and topography that slopes to an extent that regrading to create a flat surface would be impracticable, rendering an unusually large portion of the property unusable for the purpose of locating the proposed accessory structure. See Exhibits 3 and 4(b). Thus the Board finds that the subject property satisfies both Section 59-7.3.2.E.2.a.i and Section 59-7.3.2.E.2.a.iii of the Zoning Ordinance.

Section 59-7.3.2.E.2.a.v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement and slideshow presented at the hearing, that the proposed location of this agricultural building in close proximity to the property line and roadway is consistent with the historical location of buildings in this area. See Exhibits 3 and 11. Accordingly, the Board finds that the proposed development substantially conforms with the established historic or traditional development pattern, in satisfaction of this Section.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner is not responsible for the shape of this property, for its sloping topography, or for the presence of a large flood plain and stream valley buffer. Thus the Board finds that the special circumstances applicable to the property are not the result of actions by the Petitioner, in satisfaction of this Section.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that when the required accessory structure setbacks are applied to this unusually-shaped corner lot, and the areas rendered unusable by the aforementioned topographical and environmental features are removed from consideration, the resultant area available for construction of an accessory structure is unusually constrained and not sufficient for the proposed construction. The Board further finds, based on Exhibit 4(b), that the only level area of sufficient size that is behind the rear building line of the house and not located in the flood plain or encumbered by steep topography is the area of the existing outdoor riding ring which, because the subject property is a corner lot, is partially located in the required side street setback. Finally, the Board finds, per the Petitioner's Statement, that the proposed structure "has been

'pushed' as far to the west as it can go before encountering slopes with steep inclines leading to the flood plain and stream valley buffer," a statement which is supported by the Petitioner's testimony that there is a 28-foot drop in this area. See Exhibit 3. In light of the foregoing, the Board finds that the requested variance is the minimum necessary to permit the construction of the proposed equestrian facility in the location of the existing riding ring, and thus to overcome the practical difficulties that full compliance with the required setbacks would impose due to this property's extraordinary shape, topography, and environmental constraints, in satisfaction of this Section.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds, per the Statement, that the applicable master plan does not specifically address the location of buildings on the subject property, and contains no plans to realign the abutting portion of New Hampshire Avenue. See Exhibit 3. The Board further finds that the requested variance will allow the current use of the property as a residence with an equestrian operation to continue, and thus can be granted without substantial impairment to the intent and integrity of the applicable master plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

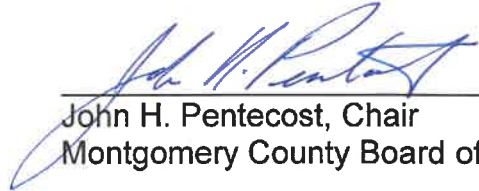
The Board finds, based on the Statement, that the "paved area of New Hampshire Avenue is set back a substantial distance from the property's boundary line and the Master Plan reflects no plans to realign New Hampshire Avenue, a fact verified by the State Highway Administration." The Board further finds, again based on the Statement, that the proposed construction will not abut any single-family residences, and that the property across New Hampshire Avenue from the proposed indoor riding ring is farmed. See Exhibit 3. Finally, the Board finds, in accordance with the statements made by Mr. Kline and the photographs included in Exhibit 11, that there is a substantial vegetative buffer along New Hampshire Avenue which will obscure the view of the proposed structure, and that the record contains letters of support from the other property owners on Rivermist Court. See Exhibits 9(a)-(d). Based on the foregoing the Board finds that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this Section.

Accordingly, the requested variance of 40 feet from the side street lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a) and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Bruce Goldensohn and Jon W. Cook in agreement, and with Katherine Freeman necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of July, 2019.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.